

1 Kishore Kripalani In Support of Memorandum of Points and Authorities in Opposition to Motion
2 to Dismiss or Transfer (hereinafter "Kripalani Dec.").

3
4 **A. Introduction**

5 Plaintiffs' surprisingly perfunctory opposition does little to seriously challenge, much
6 less overcome, defendants' showing that this Court lacks personal jurisdiction over either or both
7 of the defendants and that, in any event, this action should be transferred to the United States
8 District Court for the District of Nevada. Amidst statements that argue the "merits" of
9 Plaintiffs' underlying case or vilify Defendants, Plaintiffs' Opposition twists, spins,
10 mischaracterizes and misstates "facts", all in an effort to manufacture jurisdiction and obstacles
11 to the requested transfer of this case where none exist.
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13 For example, Plaintiff Kripalani falsely and/or or misleadingly states that "Defendants
14 refused to enter into a trademark license agreement and hence are not licensed to use the mark
15 and infringe Plaintiffs' trademark rights" (Kripalani Dec. ¶ 2.11) To the extent Defendants
16 have not already responded to such issues (see, for example, Kohli Dec., ¶, 18), these issues will
17 be addressed in the multiple counterclaims and defenses that Defendants will assert at the
18 appropriate time and place in this action, as noted in Defendants' moving papers. For now,
19 Defendants will focus on the issues of personal jurisdiction and venue that are the subject of
20 Defendants Motion to Dismiss/Transfer.
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23 **B. There Is No Basis for this Court to Properly Assert Personal Jurisdiction Over
24 Either Defendant.**

25 Defendants' initial moving papers explain why it would be improper for this Court to
26 exercise personal jurisdiction over either of the Defendants. See Defendants Motion to
27 Dismiss/Transfer, pp. 7-12 In an apparent effort to show "intentional" conduct aimed at
28 California residents and, presumably, sufficient minimum contacts to support personal
jurisdiction over the defendants, Plaintiffs offer a series of flimsy, confusing and meritless

arguments. First, Plaintiffs state “[t]he San Francisco area and Las Vegas area major tourist center and many patrons (“patrons” is presumably a reference to patrons of Plaintiffs’ restaurants) travel frequently back and forth between the two areas.” Kripalani Dec. ¶2.2 To the extent this is true, this can hardly be the basis for finding that *defendants* have engaged in conduct aimed at California or otherwise be the basis for personal jurisdiction over defendants. If such were the case, any restaurant that operates locally in any major tourist destination could be subject to personal jurisdiction in the United States District Court for the Northern District of California. Plaintiffs also state that “[t]he décor, layout, operation, cooking, food, staff and other and other *sic* attributes of the Gaylord Las Vegas restaurant were planned from California and based upon the Plaintiffs’ California Gaylord restaurants.” Kripalani Dec. ¶ 2.5 Even if this could provide a basis for personal jurisdiction over the defendants, or either of them, this statement is not true. *See*, Supplemental Declaration of Satpal S. Kohli In Support of Motion to Dismiss for Lack of Personal Jurisdiction, To Dismiss For Improper Venue Or In the Alternative To Transfer for Improper Venue (28 USC §1406(a)) Or In the Alternative to Transfer for Convenience (28 USC § 1404(a) (“Supplemental Kohli Dec.”) ¶ 4. Plaintiffs even refer to obvious hearsay in an attempt to show that the Nevada Restaurant’s advertising practices are somehow targeting and affecting California residents. Kripalani Dec. ¶¶ 2.14, 2.15

Most important, however is the disingenuous and confusing way Plaintiffs address the issue of the advertisement on the third party website located at www.usmenuguide.com. In an apparent attempt to convince the Court that Defendants are responsible for this advertisement, Plaintiffs blatantly mischaracterizes the arguments of Defendants counsel in respect of the same. To wit, Plaintiffs Opposition states:

“Defendants argue Plaintiffs placed the www.usmenuguide.com ad for the Las Vegas Gaylord in the Rio Hotel. That ad for the Rio Hotel wrongfully displays Plaintiffs’ California Gaylord restaurant in Sausalito, CA (which obviously is not located in the Rio Hotel in Las Vegas). Defendants argue that such ad was posted by Plaintiffs prior to June 17, 2004. Unfortunately for Defendants, Plaintiffs’ California Gaylord restaurant in Sausalito, CA did not come into existence until September 2005 more than a year after June 17, 2004. Regardless, Defendants knowingly rely on

1 such ads with the clear intent to confuse the public in California about the
2 relationship between Plaintiffs' California Gaylord restaurants and
3 Defendants Las Vegas Gaylord Restaurant... " Plaintiffs' Opposition, ¶
3.13.

4 Plaintiffs then go on to say:

5 "Regardless, Defendants knowingly rely on such ads with the clear intent
6 to confuse the public in California about the relationship between
7 Plaintiffs' California Gaylord restaurants and Defendants' Las Vegas
Gaylord." *Id.*

8 It is worth breaking down and analyzing these statements because (i) Plaintiffs'
9 arguments in support of personal jurisdiction and against transfer of venue rely heavily on the
10 Plaintiffs' conclusion that Defendants are responsible for the "side by side" advertising on
11 www.usmenuguide.com., and (ii) these statement reflect the facile, confusing and conclusory
12 manner in which the Plaintiffs are addressing the issue of personal jurisdiction and venue transfer
13 generally.
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15 Defendants' statements regarding the advertisement in www.usmenuguide.com are clear
16 from paragraph 25 of the Kohli Dec. Specifically, Plaintiff Satpal S. Kohli makes clear (i) that
17 neither defendant controls the www.usmenuguide.com website and that no current member or
18 manager of Defendant Gaylord has ever listed or requested the listing of any information about
19 the Nevada Restaurant on this website. Indeed, Defendants were not even aware of the ad on
20 the www.usmenuguide.com website until the commencement of this action. Supplemental Kohli
21 Dec. ¶5 Of course, Defendants do not definitively "argue" that Plaintiffs placed the subject ad
22 on www.usmenuguide.com at all, but merely offer a plausible explanation as to how it got there.
23 Whether Plaintiffs' Sausalito came into existence before or after June 17, 2004 does not change
24 the plausibility of this, any more than it "proves" Defendants posted the ad on the subject
25 website, as Plaintiffs would like the Court to conclude. It should noted here, however, that even
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as Plaintiffs clumsily attempt to attribute advertisements on third party websites and print publications to Defendants and complain about the “damage” arising from the same, Plaintiffs’ *own website* has continuously and uninterruptedly associated the Nevada Restaurant with Plaintiffs’ restaurant in California (See, Declaration of Gregory F. Buhyoff In Support of Motion to Dismiss for Lack of Personal Jurisdiction, To Dismiss For Improper Venue Or In the Alternative To Transfer for Improper Venue (28 USC §1406(a)) Or In the Alternative to Transfer for Convenience (28 USC § 1404(a), ¶ 3, 4), and it was Plaintiff Kripalani who placed an August 2006 advertisement in *India West* regarding the Nevada Restaurant. Supplemental Kohli Dec., ¶ 5. This renders all the more plausible Defendants’ explanation of who is responsible for the ad on the www.usmenuguide.com website (if it was not simply someone associated with this informational third party website). The issue for personal jurisdiction analysis, however, is whether *Defendants* are responsible for the advertisement on www.usmenuguide.com, and clearly *neither* of them are. Defendants’ baseless argument that “[r]egardless, Defendants knowingly rely on such ads with the clear intent to confuse the public in California about the relationship between Plaintiffs’ California Gaylord restaurants and Defendants’ Las Vegas Gaylord restaurant” is as puzzling as it is silly because Defendants did not even know about the ad until the commencement of this action.

Without citing any authority to support their position, Plaintiffs state “Defendant Gaylord is owned and controlled by Defendant Koholi *sic* and hence for purposes of this issue Defendants can be considered one and the same.” Plaintiffs’ Opposition, p 4, lines 7-8. This is clearly not automatically the case. See, for example, *Calder v. Jones*, 465 US, 783. Therefore, even if the Court were to conclude it has personal jurisdiction over Defendant Gaylord, LLC, it does not automatically follow that it has personal jurisdiction over Plaintiff Kohli, all of whose acts in

1 relation to the Nevada Restaurant were in his capacity as Managing Member of Gaylord, LLC, a
 2 Nevada limited liability company, not in his personal capacity. Supplemental Kohli Dec., ¶ 7.

3 **C. Venue Is Not Proper in the Northern District of California**

4 Defendants have shown in their moving paper why venue is not proper in the Northern
 5 District of California and therefore this action should either be dismissed or transferred to the
 6 District of Nevada. *See* Defendants Motion to Dismiss/Transfer, pp. 13-15, line 9.

7 In support of its argument that venue is proper under Fed. R. Civ. P. 12(b)(3) Plaintiffs
 8 first argue that

9 “a substantial part of the events giving rise to the claim occurred in California, to
 10 wit, advertising in California by Defendants both causing *sic* and relying upon
 11 grossly misleading ads such as the Las Vegas Gaylord restaurant ad for the Rio
 12 Hotel in Las Vegas that actually displays Plaintiffs California Gaylord restaurant
 13 in Sausalito, CA. There are many similar confusing ads that confuse the Las
 14 Vegas Gaylord restaurant with Plaintiffs California Gaylord restaurant.”

15 Plaintiffs’ Opposition, page 5, lines 18-24.

16 First, it is not even clear what “advertising in California” Plaintiffs are referring to in
 17 above passage. The “Las Vegas Gaylord restaurant ad for the Rio Hotel in Las Vegas that
 18 actually displays Plaintiffs *sic* restaurant in Sausalito, CA” is presumably a reference to the ad on
 19 www.usmenuguide.com, but Defendants have already shown that this ad was not placed by
 20 either of them. As to Plaintiffs’ additional statement that “there are many similar confusing ads
 21 that confuse the Las Vegas Gaylord restaurant with Plaintiffs *sic* California Gaylord restaurant”,
 22 Plaintiffs fails to identify any these ads or support its statement by Declaration, or even by way
 23 of argument of counsel. Indeed, it appears that Plaintiffs are simply making things up as they
 24 go.
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26 Plaintiffs confusing arguments do not stop there. At section 3.2.3 at of Plaintiffs’
 27 Opposition, Plaintiffs state that “Defendants argue that a website cannot serve as an “act or
 28 transaction” in the forum state for venue relying on *Equidyne Corp. v. Does*, 279 F.Supp2d 481,

1 487 (D DE 2003)”, which is true of the website that Defendant Gaylord, LLC does control,
 2 namely, the website located at www.gaylordlv.com Kohli Dec., ¶23 However, in support of its
 3 position that “this argument is misplaced”, Defendants strangely refer not to the website of the
 4 Nevada Restaurant, which Defendant Gaylord, LLC controls, but apparently to the
 5 www.usmenuguide.com website which neither defendant controls, and the “side-by-side
 6 advertising of Defendants’ Las Vegas Gaylord restaurants.”

8 In support of its position that venue is proper in the Northern District of California,
 9 Plaintiffs also argue that “a substantial part of the property that is the subject of the action is
 10 situated’ in northern California since three of the five Plaintiffs’ licensed or owned Gaylord
 11 restaurants are located there.” However, according the complaint, this is a trademark
 12 infringement action and the “property rights” at issue are Plaintiff Ajanta Corporation, Inc.’s
 13 alleged *trademark rights*, not the three restaurants located in Northern California. Plaintiffs’
 14 twisted argument as to what property is at issue and where it is located cannot possibly support
 15 venue in this case.

17 **D. This Action Should Be Transferred to the District of Nevada for Convenience**

18 In their moving papers, Defendants explain why the relevant factors support a transfer of
 19 this action to the District of Nevada for convenience. *See* Defendants Motion to
 20 Dismiss/Transfer, pp. 15-20. Rather than engage the issues, Plaintiffs merely say that
 21 “[p]laintiffs’ find the present court more convenient” and “[n]one of the Defendants arguments
 22 are persuasive.” Otherwise, Plaintiffs utterly fail to address the factors relevant to determining
 23 the propriety of transferring venue, except to make a vague, makeweight claim in the “Statement
 24 of Relevant Facts” that “[p]laintiffs expect to call at least as many residents of California as
 25 Defendants intends to call from Nevada” (all of whom are supposedly going to testify as to the
 26 “damages caused by Defendants in California.”) Plaintiffs Opposition, ¶ 2.17, page 3, line 24
 27 through page 4, line 2 For its part, Defendants have thoroughly addressed each of the relevant
 28 factors, including, amongst others, the location of operative events in the lawsuit, the

1 convenience of witnesses (which Defendants have identified with some specificity), as well as
2 the important fact that Nevada laws permeate the claims, prospective counterclaims and
3 defenses. Since filing its initial moving papers, Defendants have obtained further evidence of
4 the key role Nevada law will play in the case. See Supplemental Kohli Dec., ¶6

5 **E. Conclusion**

6 Defendants have demonstrated that this Court lacks personal jurisdiction over the
7 Defendants and that this action, in any event, should be transferred to the District of Nevada for
8 improper venue or convenience. Plaintiffs have failed to rebut Defendants' arguments.
9 Accordingly, Defendants respectfully request the Court to dismiss this action or transfer the same
10 to the District of Nevada as requested in Defendants Motion to Dismiss/Transfer.
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